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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/803,835	03/12/2001	Martin Ryzl	16159.012001; P5534CNT	9990

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EXAMINER

GARCIA OTERO, EDUARDO

ART UNIT	PAPER NUMBER
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2123

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/803,835

Applicant(s)

RYZL, MARTIN

Examiner

Eduardo Garcia-Otero

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/12/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION: Non-Final (first action on the merits)

Introduction

1. Title is: MODULE FOR DEVELOPING WIRELESS DEVICE APPLICATIONS USING AN INTEGRATED EMULATOR.
2. First named inventor is: RYZLE.
3. Claims 1-15 have been submitted, examined, and rejected.
4. US Application was filed 3/12/04, and no earlier priority is claimed.

Index of Important Prior Art

5. Kurple refers to US Patent 6,282,152.
6. Farris refers to US Patent 6,167,253.
7. Chen refers to US Patent 6,198,945.

Definitions

8. Microsoft Computer Dictionary, Fourth Edition, by Microsoft Press, JoAnne Woodcock as Senior Contributor, ISBN 0-7356-0615-3, May 1999, provides the following definitions:
 - **“Emulate”** is defined as “For a hardware or software system to behave in the same manner as another hardware or software system. In a network, for example, microcomputers might emulate terminals in order to communicate with mainframes”.
 - **“Drop-down menu”** is defined as “A menu that drops from the menu bar when requested and remains open without further action until the user closes it or chooses a menu item. Compare pull-down menu”.
 - **“Virtual machine”** is defined as “Software that mimics the performance of a hardware device, such as a program that allows applications written for an Intel Processor to be run on a Motorola chip. Acronym: VM”.
 - **“Profile¹”** is defined as “See user profile”.
 - **“Profile²”** is defined as “To analyze a program to determine how much time is spent in different parts of the program during execution”.
 - **“User profile”** is defined as “A computer-based record maintained about an authorized user of a multiuser computer system. A user profile is needed for security and other

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reasons; it can contain such information as the person's access restrictions, mailbox location, type of terminal, and so on. See also user account".

Specification-objections-incorporation of essential material

9. The incorporation of essential material in the specification by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973). Also see MPEP 608.01(p).
10. The Specification improperly attempts to incorporate essential material by reference to a hyperlink at Specification page 3 and page 4. See MPEP 608.01(VII) and MPEP 608.01(p).

35 USC § 112-Second Paragraph-indefinite claims

11. The following is a quotation of the second paragraph of 35 U.S.C. 112: The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
12. Claims 2, 3, 13, and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
13. In claims 2, 3, 13, and 14, the term "Integrated Development Environment" is not adequately defined. The claims are interpreted in view of the discussion at Specification page 4.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action: (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows: Determining the scope and contents of the prior art. Ascertaining the differences between the prior art and the claims at issue. Resolving the level of ordinary skill in the pertinent art. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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16. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable.
17. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admission in view of Kurple US Patent 6,282,152.
18. Independent claim 1 is an "apparatus" claim with 2 limitations, numbered by the Examiner for clarity.
19. In claim 1 limitation [1], **"a module having a plurality of development tools for use in the creation of the application"** is disclosed by Applicant's Admission at FIG 5 which is labeled "(PRIOR ART)". Note the FIG 5 "INTEGRATED DEVELOPMENT ENVIRONMENT (IDE)" which contains "FORM EDITOR" and "FULL-FEATURED TEXT EDITOR" and "DEBUGGER" and "COMPILER". See discussion at Specification page 4 and 5.
20. Regarding admissions, MPEP § 2129 states "When applicant states that something is prior art, it is taken as being available as prior art against the claims". *In re Nomiya*, 509 F.2d 566, 184 USPQ 607, 611 (CCPA 1975) states "admissions...may be considered "prior art" for any purpose, including use as evidence of obviousness under § 103". *Constant v. Advanced Micro-Devices*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1063 (Fed. Cir. 1988), "[Applicant's] own admission during prosecution...is binding upon him". Additionally, U.S. Patent and Trademark Office (USPTO), Formulating and Communicating Rejections Under 35 U.S.C. 1037 (Feb. 13, 1991) states when relying on an admission as evidence of obviousness, moreover, it is unnecessary to cite a corroborating reference to support the admission. Also see 37 C.F.R. § 1.104(c)(3).
21. Applicant's Admission apparently does not expressly disclose the additional limitations.
22. In claim 1 limitation [2], **"an emulator of the wireless-connected device integrated with the module"** is disclosed by Kurple at column 2 lines 52-54 "a universal, wireless controller, emulates transmissions of wireless transmitters to control features of a plurality of systems"
23. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant's Admissions. One of ordinary skill in the art would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.

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24. In claim 2, **“the module is included in an Integrated Development Environment”** is disclosed by Applicant’s Admission at FIG 5 which is labeled **“(PRIOR ART)”**. Note the FIG 5 **“INTEGRATED DEVELOPMENT ENVIRONMENT (IDE)”** which contains **“FORM EDITOR”** and **“FULL-FEATURED TEXT EDITOR”** and **“DEBUGGER”** and **“COMPILER”**.
25. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant’s Admissions. One of ordinary skill in the art would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.
26. In claim 3, **“the module is accessible through a drop-down menu in the Integrated Development Environment”** is disclosed by Applicant’s Admission at FIG 5 which is labeled **“(PRIOR ART)”**. Note the FIG 5 **“INTEGRATED DEVELOPMENT ENVIRONMENT (IDE)”** which contains **“FORM EDITOR”** and **“FULL-FEATURED TEXT EDITOR”** and **“DEBUGGER”** and **“COMPILER”**. Note that the use of drop-down menus is a standard and ubiquitous method of accessing menus in graphical user interfaces for software such as editors.
27. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant’s Admissions. One of ordinary skill in the art would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.
28. In claim 4, **“the emulator is designed to execute the application”** is disclosed by Kurple at column 2 lines 52-54 **“a universal, wireless controller, emulates transmissions of wireless transmitters to control features of a plurality of systems”**
29. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant’s Admissions. One of ordinary skill in the art would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.
30. In claim 5, **“an additional emulator for an additional wireless-connected device”** is disclosed by Kurple at column 2 lines 52-54 **“a universal, wireless controller, emulates transmissions of wireless transmitters to control features of a plurality of systems”**. Note *In*

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re Harza (legal precedent for duplication), 274 F.2d 669, 124 USPQ 378, 380 (CCPA 1960) which states “It is well settled that the mere duplication of parts has no patentable significance unless a new and unexpected result is produced”. See MPEP 2144.04(VI)(B). In claim 5, there is no new or unexpected result from the additional emulator.

31. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant’s Admissions. One of ordinary skill in the art would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.
32. In claim 6, **“the module is designed to allow creation and packaging of the application with a plurality of profiles without modification of the module”** is disclosed by Kurple at column 2 lines 52-54 “a universal, wireless controller, emulates transmissions of wireless transmitters to control features of a plurality of systems”. Note that MS Dictionary defines “User profile” as “A computer-based record maintained about an authorized user of a multiuser computer system. A user profile is needed for security and other reasons; it can contain such information as the person’s access restrictions, mailbox location, type of terminal, and so on. See also user account”. Thus, the Kurple term “control features of a plurality of systems” discloses the claim 6 term “plurality of profiles”
33. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use Kurple to modify Applicant’s Admissions. One of ordinary skill in the art would have been motivated to do this in order to develop Java based virtual machines to function on multiple platforms and/or to emulate legacy systems.
34. Claims 7-15 have the same limitations, and are rejected for the same reasons as “apparatus” claims 1-6 above.

Additional Cited Prior Art

35. The following US patents or publications are hereby cited as prior art, but have not been used for rejection. Applicant should review these carefully before responding to this office action.
36. Farris US Patent 6,167,253 at column 38 line 62 discloses: “The Java virtual machine is a software emulation of an idealistic hardware architecture of reexecuting Java byte-codes. A Java instruction consists of a one-byte opcode specifying the operation to be performed and

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zero or more operands supplying parameters used by the operation.” Note that Farris is directed towards “information distribution system having mobile users” at Abstract.

37. Chen US Patent 6,198,945 at column 1 lines 47-67 discloses: “As usage of wireless technology increases at a geometric rate... wireless technologies to emulate the features that are commonly found in the wireline environment (plain old telephone service (POTS) with enhanced services).”

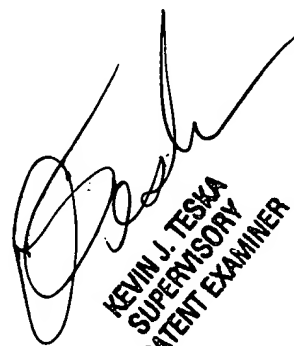
Conclusion

38. All pending claims stand rejected.

Communication

39. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eduardo Garcia-Otero whose telephone number is 703-305-0857. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 8:00 PM. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner’s supervisor, Kevin Teska, can be reached at (703) 305-9704. The fax phone number for this group is 703-872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist, whose telephone number is (703) 305-3900.

* * * * *


KEVIN J. TESKA
SUPERVISORY
PATENT EXAMINER